

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

**One Ashburton Place - Room 503  
Boston, MA 02108  
(617) 727-2293**

**BRIAN SWEET,**

Appellant

v.

**CASE NO: D1-10-290**

**DEPARTMENT OF STATE POLICE,**

Respondent

Appellant's Representative:

Joseph P. Kittredge, Esq.  
Rafanelli & Kittredge, P.C.  
1 Keefe Road  
Acton, MA 01720

Respondent's Representative:

Michael B. Halpin Esq.  
Office of the Chief Legal Counsel  
Department of State Police  
470 Worcester Road  
Framingham, MA 01702

**AMENDED DECISION**

By Decision dated May 16, 2013, acting pursuant to the provisions of G.L. c. 31, § 43 and G.L. c. 22C, § 13, as amended by Chapter 43 of the Acts of 2002, in the within appeal of the Appellant Brian Sweet to the Civil Service Commission (Commission) from the decision of the Massachusetts Department of State Police (MSP) that terminated his employment as an MSP State Trooper, effective October 28, 2010, the Commission allowed the appeal, in part, and modified the discipline from a dishonorable discharge to a 60-day suspension. Brian Sweet v. Department of State Police, 26 MCSR 202 (2013). Both Mr. Sweet and the MSP sought judicial review of the Commission's Decision, which consolidated civil action remains pending before the Superior Court Department of the Trial Court, and currently stayed by order of the Court. Brian Sweet v. Massachusetts Civil Service Comm'n, et al., Nos. MICV2013-02245 & SUCV2013-012245 [*Sweet Sup.Ct. Action*].

On June 22, 2017, the Commission issued an Order to Show Cause to the Appellant, to explain on or before July 14, 2017, why, after the Appellant has been unsuccessful in his efforts (including two appeals to the judiciary) to obtain an unrestricted license to carry a firearm from the date of the Commission's Decision to the present (a period of more than four years), which is a requirement to serve as a MSP Trooper, the Commission should not reconsider its Decision and dismiss the Appellant's appeal or take other action to modify the Commission's Decision.

To date, the Appellant has not filed a response in this appeal to the Commission's Order to Show Cause.

On July 14, 2017, the Appellant filed in the Sweet Sup.Ct. Action a "Motion for Relief from Stay for Purpose of Prohibiting the Civil Service Commission from Reopening This Matter and Reconsidering Its Decision Dated May 16, 2013" ("Motion for Relief from Stay"). Among other things, the Motion for Relief from Stay asserts that the Commission lacks jurisdiction to reconsider its May 16, 2013 Decision at this time. The Commission received from Mr. Sweet's counsel a copy of the Motion for Relief from Stay.

The Commission treats the Motion for Relief from Stay as the Appellant's response to the Order to Show Cause. After carefully reviewing the assertions and the legal arguments contained therein, the Commission concludes that nothing stated in the Motion for Relief from Stay rebuts the facts contained in the Commission's Order to Show Cause or otherwise establishes good cause why the Commission should not now reconsider its prior Decision in this appeal to take account of recent developments, including findings contained in the Framingham District Court's Decision on Mr. Sweet's firearms license suitability appeal, dated May 26, 2017. In particular, the Commission finds no basis in the allegations or argument in the Appellant's Motion for Relief from Stay to establish any reasonable expectation that the Appellant will ever

be able to regain an unrestricted license to carry a firearm and that, at most, his assertion to the contrary is, at best, a remote hope that cannot be reasonably shown to be more than mere speculation. In any event, it cannot be disputed that Mr. Sweet both (1) lost his right to carry firearms from late October 2010 until July 2014 and, due to his failure to appeal agency and court decisions, (2) became and remained permanently and irreversibly ineligible to be relicensed for a period exceeding three years. Such ineligibility coupled with his involuntary separation from employment rendered Mr. Sweet incapable of performing the essential functions of his former State Trooper position for a length of time (exceeding three years) that precludes unfettered reinstatement. This condition was not known by the Commission at the time it issued its May 2013 Decision in this case.

Accordingly, under the unique circumstances presented, the Commission concludes that the Commission's May 13, 2013 Decision in this appeal should be amended to provide, and it is so ORDERED, that the relief granted in the Commission's May 13, 2013 Decision is rescinded, and the appeal is dismissed, nunc pro tunc.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on July 20, 2017.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c.30A, §14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:  
Joseph P. Kittredge, Esq. (for Appellant)  
Michael B. Halpin Esq. (for Respondent)